

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. R.S.A. No.1691 of 1995

Chand Kaur
.....Appellant
versus
Tulsi Ram (Dead) through L.Rs. and others
.....Respondents

2. R.S.A. No.1886 of 1995

Chand Kaur
.....Appellant
versus
Tulsi Ram (Dead) through L.Rs. and others
.....Respondents

DATE OF DECISION: 11th October, 2006

CORAM:- HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Mr.R.A. Sheoran, Advocate for the appellant

Mr.Ajay Kaushik, Advocate for
Mr.Arun Jain, Advocate for the respondents

..

JUDGMENT:

Both the above mentioned appeals filed by plaintiff-Chand Kaur, involving identical questions of law and fact and having been directed against the same judgment and decree passed by Additional District Judge, Rewari dated 22.4.1995 with a further prayer for modification of trial Court findings, are being disposed of by this common order.

The facts, as per plaint, are that plaintiff Chand Kaur is the owner of land measuring 23 kanals 12 marlas situated in the revenue estate of Village Aullant, Tehsil and District Rewari, being the widow of Maniya @ Matia. The brothers of her husband, namely, Lachia and Mohria, who were unmarried and had left the village about 22/23 years prior to the filing of the suit, have not been heard or seen by anyone since the aforesaid period, therefore, they are presumed to have died. Maniya @ Matia, Lachhia and Mohria were the owners of the land in dispute as Dohlidars. The plaintiff is the sole legal heir of her husband and his brothers. It is further pleaded that Tek Chand son of Dula Ram was a tenant under the plaintiff at 1/3rd batai. He also died unmarried on 25.3.1980. His death certificate is produced on record as Exhibit P-2. The plaintiff was collecting Batai from Tek Chand regularly. During the life time of Tek Chand, the plaintiff's house was damaged and, therefore, she started living with her brother. The defendants have taken forcible possession of the suit land. The plaintiff challenged the entries made in column No.10 in Jamabandi, Exhibit D-1, wherein Tek Chand is recorded as cultivator of land without payment of any rent and by way of forcible possession. The cause of action arose to the plaintiff when the defendants refused to vacate the property on 1.1.1986.

The defendants contested the suit stating that plaintiff has not inherited the suit property as Dohlidar. They also denied the relationship of plaintiff with Lachhia and Mohria being her brothers-in-law. According to them, Lachhia and Mohria are still alive.

It is pleaded that Tek Chand was never inducted as tenant on payment of 1/3rd Batai, but he was the owner of the suit land and his possession was open, hostile and to the knowledge of the plaintiff. He remained in possession for more than 40 years and thus, became owner in possession of the suit land by way of adverse possession. Defendants claimed themselves as legal representatives of deceased Tek Chand as per pedigree table shown in paragraph No.3 of the written statement. It is further pleaded that after the death of Tek Chand, the land in dispute was inherited by their father Ram Narain and after him the defendants are in possession. They did not take forcible possession of the suit land. On the pleadings of the parties, the trial court framed the following issues:-

- "1. Whether the plaintiff is Dohlidar of the suit land? OPP
2. Whether the suit is not within limitation? OPD.
3. Whether the suit is not maintainable? OPD.
4. Whether the suit is bad for non-joinder of necessary parties? OPD.
5. Whether the defendants have become owners of the suit land, by way of adverse possession as alleged? OPD.
6. Relief."

The trial Court decided issue No.1 partly in favour of the plaintiff holding that plaintiff was Dohlidar to the extent of her husband's 1/3rd share and further decided issues No.2 to 5 in favour of the

plaintiff and, thus, partly decreed the suit. Both the parties preferred appeals against the judgment & decree of the trial court. The Ist Appellate Court while setting aside the findings of trial court on issue No.1, accepted the plaintiff's plea that she is Dohlidar over the suit property holding that she has inherited all the rights of Dohlidar of her husband and also that of her husband's brothers. The learned Ist Appellate Court, however, reversed the findings of the trial court on issues No.2 to 5 holding that defendants have become owners by adverse possession. Resultantly, the learned Ist Appellate Court partly accepted the appeals preferred by both the parties, but dismissed the suit of the plaintiff.

Aggrieved against the judgment and decree of Ist Appellate Court, the plaintiff has filed the present appeals.

Learned counsel for the defendants argued that findings of the Ist Appellate Court that plaintiff is owner of the land by virtue of her having inherited all the rights of her husband and that of both his brothers Lachhia and Mohria, are erroneous and against the provisions of the Act and rules. It is argued that Dholi's tenure is a peculiar kind of tenure and during such a tenure the property cannot be alienated by way of sale, mortgage or creating any lease amounting to permanent alienation. He further argued that status of Dholi is akin to the status of occupancy tenant for the purposes of protecting possession over the suit land. Learned counsel further argued that the moment Dohlidar

fails to render the requisite services for which Dholi is created, the rights of Dohlidar are extinguished and property reverts to original proprietor. Learned counsel further pointed out that after the death of Tek Chand, Ram Narain has been shown to be in cultivating possession and mutation in this respect has also been entered, which is produced on record as Exhibit D-5. He further argued that inheritance of Dholi is to be governed by the provisions of Section 8 of the Punjab Security of Land Tenures Act, 1953 (hereinafter to be referred to as 'the Land Tenures Act'), which provides as under:-

"8.Continuity of Tenancies. - The continuity of a tenancy shall not be affected by-

- (a) the death of the landlord, or
- (b) the death of the tenant except when the tenant leaves no male lineal descendants or mother or widow, and
- (c) any change therein under the same landowner and for the purpose of sections 17 and 18 of this Act, such tenancy shall be the last area so held."

Learned counsel further referred to the provisions of Section 59 of the Punjab Tenancy Act, 1887 (hereinafter to be referred to as 'the Tenancy Act') which provides that when a tenant having right of occupancy in any land dies, his rights shall devolve on his male lineal descendants; in the absence of such descendants on his widow and in the like manner on widowed mother or collateral relatives from lineal descendants. Learned

counsel argued that as per Section 8 of the Land Tenures Act, the continuity of tenancy cannot be vacated by the death of the landlord or death of the tenant except when tenant leaves no male lineal descendant or mother or widow. He further argued that any alienation made by the Dohlidar would be void and not voidable. In support, the learned counsel relied upon certain judgments of this Court in reported as **2003(4) RCR(Civil) 23 [Ghisa Ram vs. Surat Singh]; 1993 PLJ 437 [Dev Dutt and others vs. Gram Panchayat Ranila] and 1976 PLJ 617 [Dharma vs. Smt. Harbai]**

On the other hand, learned counsel for the appellant-plaintiff argued that succession of a Dohlidar is not governed by Section 59 of the Tenancy Act nor by Section 8 of the Land Tenures Act. The succession of Dholi tenure is natural and traditional. He further pointed out that even though Dohlidar is not the owner of the land as the term is well understood, yet he is a landowner for the purposes of the Act. 'Dohli' is not a perpetual tenancy and, therefore, is not covered by the concept of tenancy law. In support, the learned counsel referred to a Division Bench judgment of this court in the case of **Baba Badri Dass vs. Sh. Dharma and others, 1981 PLJ 447.**

Another issue raised in the present appeal is as to whether the defendants and their predecessor-in-interest Tek Chand have/had become owner by adverse possession. The learned counsel for the defendants argued that their predecessor-in-interest Tek Chand had acquired the rights of an owner of occupancy tenant. It is argued that there is no evidence on record that

Tek Chand had ever paid rent to Smt. Chand Kaur. This fact is duly proved from the revenue record i.e. jamabandis placed on record. The entries in the jamabandi clearly depict that Tek Chand has been shown to be in possession of the suit land as 'Bila Lagan and by force'. These entries in the revenue record clearly show that his possession was open, hostile and to the knowledge of the plaintiff. He further argued that there is no evidence as to who had inducted Tek Chand as tenant on payment of Batai. The oral testimony of the plaintiff and other witnesses produced by the plaintiff that she had been receiving Batai from Tek Chand, cannot be accepted in view of the documentary evidence in the shape of revenue entries. It is argued that presumption of truth is attached to the revenue entries until and unless rebutted by any cogent evidence. These entries in the jamabandi have further been corroborated by the oral evidence produced by the defendants, who have stated that Tek Chand and after him Ram Narain and thereafter defendants are in possession of the land as owners.

On the other hand, learned counsel for the plaintiffs argued that defendants have failed to prove that Tek Chand and thereafter Ram Narain were in adverse possession of the suit property. It is argued that a person who claims adverse possession must show the exact date when he came into possession, the nature of his possession, the factum of his possession being known to the legal claimants and that the possession was open and undisturbed. He further argued that in the jamabandis starting from 1961-62 to 1985-86, Smt. Chand Kaur and her brothers-in-law

Lachhia and Mohria have been recorded as Dohlidars and Tek Chand has been shown as cultivator. In the column of cultivation Dohlidar has been recorded to be in possession without paying tax by way of Punarth and Tek Chand as tenant Bila Lagan by force with regard to the land comprised in Khasra No.21/13(8-0),18/2(2-8), 21/18/1 (5-12), 21/19/1(3-12). However, with regard to Khasra No.21/19/2(4-0), the possession has been shown as 'Bila Lagan Bawaja Punarth'. There is no evidence with regard to possession of any tenant over this khasra number. Lachhia, Mohria and Chand Kaur have been shown to be in cultivating possession in all the jamabandis right from 1961-62 to 1985-86.

I have considered the rival submissions made by learned counsel for the parties and perused the material on record.

There is no dispute that Dholi tenure is a holding, the rights of which are being acquired by a Brahman, who receive it as a death-bed gift from a landowner and as a Dholidar he is in the status of a *Malik Kabza*. The 'Dholi' term was grown in south-western districts of Punjab, a part of which is also in Haryana. The Dholidar has been held to be responsible for the payment of land revenue and otherwise entitled to let out, mortgage or sell the land as he pleases. A Division Bench of the Lahore High Court in **Sewa Ram vs. Udegir, AIR 1922 Lahore 126**, described the term 'Dholi', in the following words:-

"The dohli tenure is a peculiar kind of tenure to be found in the south-eastern districts of Punjab. It is a rent free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine, or to a person for a religious purpose. In the revenue records the proprietary body are recorded as the owners of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should the holder fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure.

It is beyond dispute that tenure of this kind cannot be alienated by sale or mortgage, and there can be little doubt that any alienation of that character, if made by the *dohlidar* would be absolutely void."

It is true that the expression 'Dohli' or 'Dohlidar' does not find mention both in the Punjab Tenancy Act, 1887 and Punjab Land Revenue Act, 1887. However, it finds mention in the Punjab Settlement Manual by Sir James M. Douie to the effect that a dohli tenure can never be termed as occupancy tenure. Occupancy tenure is capable of sale carrying with it a pre-emptory obligation to offer it in the first instance to the landowner. There is no such obligation in the dohli tenure. The occupancy rights are capable of being

sold in execution of a decree against an occupancy tenant, whereas, the rights of a dohlidar are not subject to such permissible process of court under the law as understood. Keeping these aspects of the matter in view, the Division Bench of this Court in Baba Badri Dass's case (supra) has held in categorical terms that dohli tenure is not of a perpetual tenancy, rather it is an instance of Malik Kabza, i.e., owner in possession, therefore, a dohlidar is owner of the land for the purposes of land revenue as well as Land Tenures Act.

Plaintiff-Chand Kaur being wife of Mania @ Matia inherited dohli rights of her husband after his death to the extent of 1/3rd share and also 2/3rd share of her unmarried brothers-in-law Lachhia and Mohria, who died intestate and were not survived by any legal heir except the plaintiff-Chand Kaur. Though the defendants have pleaded that Lachhia and Mohria are still alive, but they have not been able to rebut the plea taken by the plaintiff that they (Lachhia and Mohria) have not been heard or seen for the last more than 20 years and, therefore, are presumed to have died a civil death. As discussed above, a dohlidar is not a perpetual tenant, but he is an owner in possession, hence, the provisions of inheritance as contained in Section 59 of the Tenancy Act would not be applicable. Since there is no evidence on record that there is any other heir of plaintiff's husband or his two unmarried brothers except the plaintiff, she inherited all the rights of Dohlidar of her husband as well as of his two

brothers Lachhia and Mohria. Accordingly, I uphold the findings of the Ist Appellate Court on this issue.

The next argument to be considered is as to whether the defendants have become owners by adverse possession. In order to prove this issue, the defendants have produced revenue entries of the land in the form of jamabandis, Exhibits D-1 to D-3, which pertain to the years 1961-62, 1980-81 and 1985-86. As per these entries, the land is owned by the proprietors of the village and is cultivated by Lachhia, Mohria and Chand Kaur, widow of Matia @ Mania as dohlidars through Tek Chand as gair marussi tenant. In the column of rent with regard to khasra Nos.21/13, 18/2, 21/18/1, 21/19/1, it is mentioned that Dohlidar Bila Lagan Bawaja Punarth i.e. without payment of rent for religious purposes. It is further mentioned that the land is being cultivated by gair marussi tenant without payment of rent and forcibly. It is, thus, evident that the land was being cultivated by Tek Chand since 1961-62 without payment of rent and by forcible possession. The oral evidence led by the plaintiff shows that she had left the village of her in-laws 7-8 years back and had been receiving 1/3rd batai from Tek Chand and the defendants entered into possession by force after 25.3.1980 i.e. after the death of Tek Chand. However, the revenue entries from the year 1961-62 to 1985-86 prove otherwise. The men may lie but the circumstances do not. Plaintiff-Chand Kaur has given her age as 65 years on the date of deposition i.e. 20.7.1989. She admitted in the cross examination that she had been

married in her childhood and her husband had died even before her *Gona* ceremony. As per the custom prevalent in Punjab and Haryana, the bride did not visit her in-laws' house prior to the *Gona* ceremony and, therefore, the plaintiff had no occasion to reside in the village of her husband where the land is situated. She has herself stated that she had left the village Aullant a few days after the marriage, whereas, according to her own version, her husband had died just 2 months after the marriage and before performing the *Gona* ceremony. From her testimony itself, it is well-proved that she had actually not resided in the village Aullant and, therefore, there was no occasion for her to receive 1/3rd batai from Tek Chand. On the other hand, Tek Chand has been shown to be in cultivating possession of the suit land without payment of rent and by force since 1961-62. This fact clearly shows that his possession over the property, as mention above, was open, hostile and to the knowledge of the doholidars. Moreover, there is nothing on record to show as to who had inducted Tek Chand as tenant. Therefore, the defendants being the legal heirs of Tek Chand have inherited his rights in the suit property comprised in khasra No.21/13(8-0), 18/2 (2-8), 21/18/1(5-12), 21/19/1(3-12) and their possession being open, hostile and to the knowledge of the original doholidars for more than 12 years, the plea of adverse possession is proved in their favour with regard to the land comprised in abovementioned khasra numbers.

With regard to the land comprised in Khasra No.21/19/2(4-0), the entries in the column of rent are clearly mentioned as 'Bila Lagan Bawaja Punarth' and in the column of cultivation Lachia, Mohria and Chand Kaur, widow of Matia have been shown to be in cultivating possession of this land. As such, possession of Tek Chand and thereafter that of defendants over the land compromised in this khasra number is not at all proved and as such, the defendants cannot be said to have become owners by adverse possession of land comprised in Khasra No.21/19/2(4-0). The Ist Appellate Court has erred in holding that defendants have acquired the right of ownership by adverse possession with regard to this land also. The findings of the Ist Appellate Court, insofar as this land, are set aside and it is held that plaintiff-Chand Kaur is still the owner in cultivating possession of the land comprised in Khasra No.21/19/2(4-0).

Consequently, the appeals filed by the plaintiff-Chand Kaur are partly allowed and findings recorded by the Courts below are modified to the extent as indicated above.

11th October, 2006
pc

(**NIRMAL YADAV**)
JUDGE

Note:- **Whether to be referred to Reporters -** [√] **YES/NO.**

R.S.A. No.1886 of 1995

Chand Kaur

.....Appellant

versus

Tulsi Ram (Dead) through L.Rs. and others

.....Respondents

Present: Mr.R.A. Sheoran, Advocate for the appellant

Mr.Ajay Kaushik, Advocate for

Mr.Arun Jain, Advocate for the respondents

..

For orders, see R.S.A. No.1691 of 1995 titled
as Chand Kaur vs. Tulsi Ram (Dead) through L.Rs. and
others.

11th October, 2006
pc

**(NIRMAL YADAV)
JUDGE**